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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812344-2449-02]

RIN 0648-AY74

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Snapper-Grouper Fishery Off the Southern Atlantic States;
Amendment 20A

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the management measures of Amendment 20A (Amendment 20A) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises the wreckfish individual transferable quota (ITQ) program, by defining and reverting inactive wreckfish quota shares, redistributing reverted quota shares to remaining shareholders, establishing a cap on the number of wreckfish quota shares a single entity may own, and establishing an appeals process for redistribution of reverted wreckfish quota

shares. The intent of this rule is to help achieve the optimum yield (OY) from the wreckfish commercial sector in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Amendment 20A may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

Written comments regarding burden-hour estimates or other aspects of collection-of-information requirements contained in this final rule may be submitted to Anik Clemens by e-mail Anik.Clemens@noaa.gov, or telephone 727-824-5305, and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or e-mail: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: Wreckfish is part of the snapper-grouper fishery and is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On January 12, 2012, NMFS published a notice of availability for Amendment 20A and requested comments (77 FR

1908). On March 30, 2012, NMFS published a proposed rule for Amendment 20A and requested public comments (77 FR 19165). The proposed rule and Amendment 20A outline the rationale for the actions contained in this final rule. Amendment 20A was approved by the Secretary of Commerce on April 6, 2012. A summary of the actions implemented by this final rule are provided below.

This final rule revises the wreckfish ITQ program, established in 1992, by defining and reverting inactive wreckfish quota shares, redistributing reverted quota shares to remaining shareholders, establishing a share cap, and establishing an appeals process for redistribution of reverted wreckfish quota shares. The intent of this rule is to achieve OY in the wreckfish commercial sector while maximizing harvest potential and not exceeding the annual catch limit (ACL).

Changes from the Proposed Rule

When the Council took final action to approve Amendment 20A in December 2011, there were 20 wreckfish shareholders. Of those 20 shareholders, 13 were considered to be "inactive" and 7 "active" as defined in Amendment 20A. The 13 inactive shareholders held 28.18 percent of the shares, which would be redistributed among the 7 active wreckfish shareholders. After the Council took final action, several share transfers occurred

which changed the distribution of shares in the wreckfish commercial sector of the snapper-grouper fishery. As of [insert date of publication in the FEDERAL REGISTER], there are 6 active shareholders and 4 inactive shareholders. The active shareholders now hold 98.599 percent of the shares, and the inactive shareholders now hold 1.401 percent of the shares. The proposed rule and Amendment 20A state that 5 percent of the wreckfish quota shares will be set-aside, to resolve any appeals, for a period of 90 days starting on the effective date of the final rule. Due to the share transfers that occurred after the Council took final action to approve Amendment 20A in December 2011, only 1.401 percent of the shares remains "inactive" and thus are available to be reverted and redistributed. Therefore, only 1.401 percent is available as the set-aside to resolve any appeals, and NMFS will redistribute any shares remaining after the appeals process is complete. Any shares remaining after completion of the appeals process, up to 1.401 percent of the shares, will be reverted and redistributed among the remaining active shareholders, depending on the remaining individual shareholder's landings history from April 16, 2006, through January 14, 2011.

Comments and Responses

NMFS received a total of 13 comments on Amendment 20A and the proposed rule, which include comments from individuals, including those in the recreational sector, restaurant and seafood businesses, and a consulting firm. Comments received regarding the value of the wreckfish ACL, the acceptable biological catch level, and the recreational wreckfish allocation, are related to actions contained in the South Atlantic Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment), and are not in Amendment 20A. The final rule to implement the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012), which became effective April 16, 2012, addressed all comments received on that amendment and its proposed rules. Specific comments related to the actions contained in Amendment 20A and the proposed rule and NMFS' respective responses, are summarized below.

Comment 1: Inactive shares should be allocated to the recreational sector for wreckfish.

Response: The Council did not consider redistributing inactive commercial wreckfish shares to the recreational sector in Amendment 20A. Prior to the implementation of the Comprehensive ACL Amendment on April 16, 2012, a specific allocation of wreckfish for the recreational sector did not exist within the FMP. Due to recreational snapper-grouper

fishermen reporting an increased incidence of wreckfish encounters in recent years, and the fact that wreckfish are caught in very deep water, it is assumed all incidentally caught wreckfish by recreational fishermen are released dead. The Council decided to create a wreckfish recreational allocation of five percent in the Comprehensive ACL Amendment to allow recreational fishermen to retain fish, which would otherwise likely die. The recreational ACL is 11,750 lb (5,330 kg) round weight.

The Council chose to redistribute latent (inactive) shares to active commercial participants to optimize commercial wreckfish harvest and minimize latent effort. The Council's decision allows those participants, who are more dependent on wreckfish harvest, to retain their current shares and to be eligible to receive shares from redistribution. The Council chose to redistribute inactive shares to wreckfish shareholders who reported wreckfish landings during the fishing years 2006/2007 through 2010/2011.

Comment 2: Redistributed reverted shares should be based on 50-percent equal allocation in addition to 50-percent landings history for the total wreckfish landings from April 16, 2006, through January 14, 2011.

Response: The Council analyzed and evaluated using that approach, but chose to redistribute reverted shares to remaining shareholders based on landings history only from April 16, 2006, through January 14, 2011. The Council's decision allows those participants who are more dependent on wreckfish harvest to retain their current shares and to be eligible to receive shares from redistribution.

Comment 3: The final outcome of Amendment 20A is questionable since the purchase (or transfer) of inactive shares (those with no recent activity) would render these shares ineligible for redistribution. An analysis of what can be appealed is requested.

Response: One of the purposes of Amendment 20A is to redistribute any inactive shares to active shareholders. After the Council approved Amendment 20A for Secretarial review at its December 2011 meeting, many inactive shares were purchased and transferred to active shareholders. Any inactive shares remaining after implementation of this final rule are available for redistribution. Though the number of shares to be redistributed has changed since the Council took final action (from 28.18 to 1.401 percent of the shares), the items that may be appealed have not changed. The appeals process allows inactive wreckfish shareholders to appeal the reversion of their

shares that NMFS considers "inactive", and active shareholders can appeal the percentage of reverted shares that NMFS redistributes to them. Any shares remaining after completion of the appeals process, up to 1.401 percent of the shares, will be reverted and redistributed among the remaining active shareholders, depending on the remaining individual shareholder's landings history from April 16, 2006, through January 14, 2011.

Comment 4: The 49-percent share cap seems excessive for a public resource.

Response: The Council considered seven alternatives with respect to establishing a share cap in the wreckfish ITQ program: no share cap, and share caps of 15 percent, 25 percent, 49 percent, 65 percent, and the highest percentage of total shares held by a single shareholder after redistribution of inactive quota shares. The Council considered a variety of factors in determining what constitutes an excessive share for this public resource and an appropriate share cap, in the wreckfish ITQ program, including market power in the product, input, and quota share markets, management objectives contained in the Magnuson Stevens Act, and its management objectives for Amendment 20A.

The creation of market power in seafood markets through

concentration of wreckfish quota shares is unlikely because wreckfish directly competes against other domestically harvested and imported groupers, snappers, and other fish. Further, most of the important inputs (e.g., fuel, crew, hooks, line, etc.) used by commercial wreckfish fishermen are also used by commercial fishermen harvesting other species in competition with wreckfish fishermen, recreational fishermen, or the general public. Thus, even if a single shareholder possessed all of the quota shares, that shareholder very likely would not possess any control over input prices because of competition from other buyers.

A share cap implemented in a commercial sector operating under a catch share program customarily applies at the individual rather than the shareholder level. This approach prevents individuals from exceeding the share cap by being or becoming partial or full owners of other entities that also own quota shares, or more specifically share certificates in the case of wreckfish.

With respect to the 49-percent share cap alternative, although this alternative does not allow the historically largest harvester to maintain his recent level of landings, it does allow this individual to come relatively close, particularly if the individual chooses to buy additional shares

up to the 49-percent cap. As such, the Council expected this individual to have sufficient quota shares to continue operations after redistribution of the inactive shares. Further, the other individuals were expected to have sufficient shares to maintain or even exceed their recent landings after redistribution of the inactive shares. Thus, the 49-percent share cap alternative was the most likely to ensure the commercial ACL is harvested and OY is attained. The Council thought it was equitable to allow shareholders with greater economic dependence on wreckfish landings to possess relatively more of the quota shares. Given the benefits of the 49-percent share cap alternative relative to the other alternatives, for this public resource, the Council selected a 49-percent share cap.

Comment 5: The appeals process will only be as good as the NMFS wishes that effort to become.

Response: The appeals process included in Amendment 20A allows inactive wreckfish shareholders to appeal the reversion of shares they hold (inactive status), and active shareholders to appeal the percentage of reverted shares redistributed to them. The Regional Administrator will render decisions on appeals based on NMFS logbooks or state landings data if NMFS logbooks are not available. Hardship appeals will not be

considered. NMFS finds this appeals process to be appropriate for the commercial wreckfish sector.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that the actions contained in this final rule are necessary for the conservation and management of the snapper-grouper fishery in the South Atlantic and that they are consistent with Amendment 20A, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here.

One of the comments addressed in the Supplementary Information section, regarding the distribution of the latent shares that would be revoked, included economic implications and is also addressed here. This comment stated that the latent shares should be retired and not redistributed to other

commercial shareholders with the exception that a small unspecified portion should be given to the recreational sector. The final rule for the Comprehensive ACL Amendment, which became effective on April 16, 2012 (77 FR 15916, March 16, 2012), allocated 95 percent of the wreckfish ACL to the commercial sector and 5 percent to the recreational sector. Allocating some portion of latent shares to the recreational sector and retiring the rest would be inconsistent with the allocation established by the Council in the Comprehensive ACL Amendment, would not allow the commercial ACL to be harvested, and would result in reduced economic benefits to commercial small business entities. Therefore, no change has been made to this final rule as a result of this comment.

Because this final rule reduces the set-aside for appeals from 5 percent to 1.401 percent and, more importantly, inactive shareholders hold all of the quota shares being set-aside, active shareholders are not expected to experience any direct, adverse economic effects due to this action. Further, because the inactive shareholders have no gross revenue or profits from commercial fishing for wreckfish, the set-aside of their quota shares in the short-term to resolve appeals would not reduce their gross revenue or profit. Thus, the direct, adverse economic effects on shareholders as a result of this action and

final rule will be less than what was estimated in the proposed rule. No other new information has been received that would affect the analysis of impacts on small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by OMB under control number 0648-0551. Public reporting burden for the appeals process regarding the redistribution of inactive wreckfish shares is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and
recordkeeping requirements, Virgin Islands.

Dated: September 20, 2012

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is
amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read
as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.15, paragraph (a) is revised to read as
follows:

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

* * * * *

(a) General--(1) Percentage shares--(i) Initial ITQ shares.

In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish were assigned at the beginning of the program. Each person was notified by the RA of his or her percentage share and shareholder certificate number.

(ii) Reverted ITQ shares. Any shares determined by NMFS to be inactive, will be redistributed proportionately among remaining shareholders (subject to cap restrictions) based on shareholder landings history. Inactive shares are, for purposes of this section, those shares held by ITQ shareholders who have not reported any wreckfish landings between April 16, 2006, and January 14, 2011.

(iii) Percentage share set-aside to accommodate resolution of appeals. During the 2012-2013 fishing year, the RA will reserve 1.401 percent of wreckfish ITQ shares prior to redistributing shares (see paragraph (a)(1)(ii) of this section) to accommodate resolution of appeals, if necessary. NMFS will distribute any portion of the 1.401-percent share remaining after the appeals process as soon as possible among the remaining shareholders.

(iv) Procedure for appealing wreckfish quota share status and landings information. Appeals must be submitted to the RA

postmarked no later than [insert date 120 days after date of publication in the FEDERAL REGISTER] and must contain documentation supporting the basis for the appeal. The only items subject to appeal are the status of wreckfish quota shares, as active or inactive, and the accuracy of the amount of landings. The RA will review and evaluate all appeals, render final decisions on the appeals, and advise the appellant of the final decision. Appeals based on hardship factors will not be considered. The RA will determine the outcome of appeals based on NMFS' logbooks. If NMFS' logbooks are not available, the RA may use state landings records. Appellants must submit NMFS' logbooks or state landings records, as appropriate, to support their appeal.

(2) Share transfers. All or a portion of a person's percentage shares are transferrable. Transfer of shares must be reported on a form available from the RA. The RA will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RA. NMFS charges a fee for each transfer of shares and calculates the amount in accordance with the procedures of the NOAA Finance Handbook. The handbook is available from the RA. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(3) ITQ share cap. No person, including a corporation or other entity, may individually or collectively hold ITQ shares in excess of 49 percent of the total shares. For the purposes of considering the share cap, a corporation's total ITQ share is determined by adding the corporation's ITQ shares to any other ITQ shares the corporation owns in another corporation. If an individual ITQ shareholder is also a shareholder in a corporation that holds ITQ shares, an individual's total ITQ share is determined by adding the applicable ITQ shares held by the individual to the applicable ITQ shares equivalent to the corporate share the individual holds in a corporation. A corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when a change occurs. This information must also be provided to the RA any time a commercial vessel permit for wreckfish is renewed or transferred.

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Date: 09/26/2012]